

Kerala Gazette No. 12 dated 23rd March 2010.

Section i

PART I



GOVERNMENT OF KERALA

Law (Leg. Publication) Department

NOTIFICATION

No. 2453/Leg. Pbn.2/2010/Law. *Dated, Thiruvananthapuram 10th February, 2010.*

The following Ordinance promulgated by the President of India and published in the Gazette of India, Extraordinary, Part II, Section I, dated the 23rd January 2010 is hereby re-published for general information.

By order of the Governor,

K. SASIDHARAN NAIR,

Law Secretary.

G. 60/2010/DTP.

MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 23rd January, 2010.
Magha 3, 1931 (Saka).

THE ANCIENT MONUMENTS AND ARCHAEOLOGICAL SITES AND
 REMAINS (AMENDMENT AND VALIDATION) ORDINANCE, 2010

No. 1 OF 2010

Promulgated by the President in the Sixtieth Year of the Republic of India.

AN ORDINANCE

Further to amend the Ancient Monuments and Archaeological Sites and Remains Act, 1958 and to make provision for validation of certain actions taken by the Central Government for public purposes under the said Act.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for her to take immediate action;

NOW, THEREFORE in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

1. *Short title and commencement.*—(1) This Ordinance may be called the Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Ordinance, 2010.

(2) It shall come into force at once.

2. *Amendment of Section 2.*— On and from the 16th day of June, 1992, in the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958) (hereinafter referred to as the principal Act), in section 2.—

(a) after clause (h) the following clause shall be inserted and shall be deemed to have been inserted, namely :—

‘(ha) “prohibited area” means any area declared by the Central Government to be a prohibited area under section 20A ;’;

(b) after clause (j), the following clause shall be inserted and shall be deemed to have been inserted, namely :—

(k) “regulated area” means any area declared by the Central Government Under Section 20B.’.

3. *Insertion of new heading and new sections 20A, 20B, 20C and 20D.*—
On and from the 16th day of June, 1992, after section 20 of the principal Act, the following shall be inserted and shall be deemed to have been inserted, namely :—

‘PROHIBITED AREA AND REGULATED AREA NEAR OR
ADJOINING PROTECTED MONUMENTS

20A. *Declaration of prohibited areas and carrying out of public work in prohibited areas.*—(1) The Central Government may, on the recommendation of an Expert Advisory Committee constituted under section 20D, by notification in the Official Gazette, declare, from time to time, in accordance with the procedure as may be prescribed, any area near any protected monument or its adjoining area to be a prohibited area in respect of such protected monument.

(2) No person, other than an Archaeological Officer, shall carry out any construction in any prohibited area referred to in sub-section (1).

(3) In a case where the Central Government is satisfied that—

- (a) it is necessary or expedient for carrying out such public work or any project essential to the public as may be notified in the Official Gazette; and
- (b) such work, in its opinion, shall not have any substantial adverse impact on the preservation, safety, security of or access to, the monument or its immediate surrounding,

it may, notwithstanding anything contained in sub-section (2), in exceptional cases, having regard to the public interest, by order and for reasons to be recorded in writing, permit such public work or project essential to the public, to be carried out.

(4) The Director-General may, on the recommendation of an Expert Advisory Committee constituted under section 20D, notwithstanding anything contained in sub-section (2), in exceptional cases, permit a person to carry out any construction activity in a prohibited area referred to in sub-section (1) in accordance with the terms and conditions of a special permission granted by him in accordance with the rules as may be made by the Central Government :

Provided that any area near any protected monument or its adjoining area declared, during the period beginning on or after the 16th day of June, 1992 but ending before the commencement of the Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Ordinance, 2010, as a prohibited area in respect of such protected monument, shall be deemed to be the prohibited area declared in respect of that protected monument in accordance with the provisions of this Act and any permission or licence granted for construction of any public work or project essential to the public or special permission granted for construction, not with standing that such public work or project essential to the public or special permission, had not been notified, in respect of such prohibited area without having obtained recommendations of the Expert Advisory Committee or any other Committee, or such notification had not been laid before Parliament, shall be and shall be deemed to have been validly granted in accordance with the provisions of this Act.

20 B Declaration of regulated area in respect of every protected monument and regulation of construction activities in such area.—

(1) The Central Government may, on the recommendation of an Expert Advisory Committee constituted under section 20D, by notification in the Official Gazette, declare, from time to time, in accordance with the procedure as may be prescribed, any area (whether near any prohibited area in respect of protected monument or not, or, its adjoining area) to be a regulated area in respect of such protected monument.

(2) The Director-General may, on the recommendation of an Expert Advisory Committee constituted under section 20D, permit a person to carry out any construction activity in a regulated area referred to in sub-section (1) in accordance with the terms and conditions of a licence granted by him in accordance with the rules as may be made by the Central Government:

Provided that any area near any protected monument or its adjoining area declared, during the period beginning on or after the 16th day of June, 1992 but ending before the commencement of the Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Ordinance, 2010, as a regulated area in respect of such protected monument, shall be deemed to be the regulated area declared in respect of that protected monument-in accordance with the provisions of this Act and any permission or licence granted for construction in such regulated area shall notwithstanding anything contained in sub-section (1) and this sub-section or that such notification had not been laid before Parliament, be deemed to have been validly granted in accordance with the provisions of this Act.

(3) Every notification issued under section 20A and this section shall be laid before each House of Parliament.

20C. *Repair renovation re-construction or construction in prohibited or regulated area.*—(1) If any person,—

(a) owns any building or construction, which existed in a prohibited area before the 16th day of June, 1992, or had been constructed with the approval of the Director-General and he desires to carry out any repair or renovation or re-construction of such building or construction; or

(b) owns or possesses any building or construction or land in any regulated area, and he desires to carry out any repair or renovation or re-construction or construction of such building or construction on such land, as the case may be.

he may make an application to the Director-General for such repair or renovation or re-construction or construction, as the case may be.

(2) The Director-General, on receipt of any application under sub-section (1) may on the recommendation of an Expert Advisory Committee constituted under section 20D by order and for reasons to be recorded in writing, permit, subject to such terms and conditions as may be specified in the permission, the carrying out of the repair or renovation work or re-construction of any building or construction referred to in that sub-section, without causing any damage to the protected monument.

(3) Every order for grant of permission under sub-section (2) shall be made within three months from the date of receipt of the application.

(4) In case the Director-General refuses to grant permission under sub-section (2), he shall, by order in writing, intimate such refusal within three months from the date of receipt of the application.

(5) If the Director-General, after grant of the permission under sub-section (2) and during the carrying out of the repair or renovation work or re-construction of building or construction referred to in that sub-section, is of the opinion (on the basis of material in his possession or otherwise) that such repair or renovation work or re-construction of building or construction is likely to have an adverse impact on the preservation, safety, security or access to the monument considerably, he may withdraw the permission granted under sub-section (2).

(6) Every order and every permission of the Director-General under this Act shall be exhibited in the website of the Archaeological Survey of India.

20D. *Expert Advisory Committee.*—(1) The Central Government may, by notification in the Official Gazette constitute one or more Expert Advisory Committees for the purposes of sections 20A, 20B and 20C, for making recommendations:

Provided that until such time an Expert Advisory Committee is constituted under this sub-section, the Expert Committee constituted by the Director-General before the commencement of the Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Ordinance, 2010 and functioning as such before such Commencement, shall be deemed to be an Expert Advisory Committee under sub-section (1) :

Provided further that the Expert Committee constituted by the Director General before the commencement of the Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Ordinance, 2010 and functioning as such before such commencement, shall cease to be the Expert Advisory Committee immediately after constitution of an Expert Advisory Committee under sub-section (1).

(2) Every reference for seeking recommendations of the Expert Advisory Committee by or under this Act shall be made by the Central Government or the Director-General, as the case may be.

(3) The Expert Advisory Committee shall, within two months of the receipt of a reference, forward its recommendations to the Central Government or the Director-General, as the case may be.

(4) An Expert Advisory Committee shall consist of the Director-General or his nominee as its Chairperson and such number of other members not exceeding six persons having proven experience and expertise in the field of archaeology, country and town planning, architecture, heritage, landscape architecture, conservation- architecture, urban planning, civil engineering, law or culture.

(5) The Central Government, or the Director-General as the case may be, shall exhibit, in their website all the recommendations of the Expert Advisory committee.

(6) The Expert Advisory Committee shall regulate its own procedure for the purposes of holding its meetings (including quorum of such meetings) and making recommendations under this Act.

(7) The Expert Advisory Committee shall mention in its recommendation as to whether any construction in any prohibited area or regulated area is likely to have any substantial adverse impact on the preservation, safety, security of, or, access to, the monument or its immediate surrounding.

(8) The members of the Expert Advisory Committee shall be entitled to such fees as may be prescribed and such fee shall be payable by the Central Government or Director-General who makes a reference for seeking its recommendations.

4. *Validation of action taken etc. under notification No. S. O. 1764 dated 16th June, 1992.*—Notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority-

(a) anything done or purported to be done or any action taken or purported to be taken by the Central Government immediately before the commencement of this Ordinance in pursuance of the notification of the Government of India in the Department of Culture (Archaeological Survey of India) number S.O. 1764 dated the 16th June, 1992 issued under rule 34 of the Ancient Monuments and Archaeological Sites and Remains Rules, 1959, shall be deemed to be and deemed to have always been done or taken validly and in accordance with law at all material times and no action taken or thing done (including any order made, agreement entered into, or notification issued for constituting any Expert Advisory Committee or any other Committee) in connection with any permission granted or licence issued for any construction activity in a prohibited area or a regulated area in respect of a protected monument shall be deemed to be invalid or ever to have become invalid merely on the ground that the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958) or the rules orders or notifications issued thereunder did not contain any provision for constitution of an Expert Advisory Committee under sub-section (1) of section 20D or notifications had not been laid before Parliament for grant of such permission or licence, as the case may be:

(b) no suit claim or other proceedings shall be instituted, maintained or continued in any court, tribunal or other authority for any permission or licence granted by the Central Government or the Director-General under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958) or any rule, order or notification made thereunder, for carrying out any repair, renovation or construction work or for undertaking any public work or Public project before the commencement of this Ordinance.

(c) no claim or challenge shall be made in, or entertained by any court, tribunal or other authority solely on the ground that the Central Government or the Director-General did not take into consideration any of the provisions of the Ancient Monuments and Archaeological Sites and Remains Act 1958 (24 of 1958) as amended by the Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Ordinance, 2010, in granting any permission or licence for the purpose of carrying out any mining or repair, renovation or construction work in a prohibited area or a regulated area at any time between the 16th day of June, 1992 and the date of commencement of this Ordinance.

PRATIBHA DEVISINGH PATIL,

President.
